IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 259 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NEW INDIA ASSURANCE CO LTD

Versus

SHAMIMBANU W/O KHALILKHAN

Appearance:

MS MEGHA JANI for Appellant

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE J.R.VORA

Date of decision: 07/02/2001

ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. This is a First Appeal under Section 173 of the Motor Vehicles Act, 1988 by the New Indian Assurance Company Limited which was Opponent No.2 before the Motor Accident Claims Tribunal.

2. The deceased Khalil Khan Ismail Khan was on his business trip for searching cattle in market on 3.10.1989 from Nandanpada to Mulher in Jeep No. MGM 3415. Shri Vishnu Rambau Ahire, owner of the said jeep, was himself driving the said vehicle. It is not in dispute that the said vehicle was insured with the appellant Insurance Company. Shri Khalil Khan Ismail Khan was sitting on the front side of the vehicle when the vehicle was climbing over the Ghat. It is alleged that the jeep was driven in a careless manner without following the norms and rules of driving on the Ghat, proper gear was not used while going up, the jeep became beyond control and started rolling back. Shri Khalil Khan Ismail Khan as a precautionary measure to give a helping hand against the rolling back of the jeep, leaned out slightly and in the meanwhile the jeep dashed against a road stone and fell by one side resulting into crushing of the head of Shri Khalil Khan Ismail Khan and as a result of which he died. The driver and owner of the said jeep was prosecuted. The heirs of deceased Khalil Khan Ismail Khan i.e. his widow and three children filed a Claim before the Motor Accident Claims Tribunal, Valsad at Navasari. The Tribunal granted compensation of Rs. 1,43,900/- with other allied reliefs and the Tribunal has also made an order with regard to investment and disbursement.

3. This Order dated 12th of October, 1999 passed by the Motor Accident Claims Tribunal has been challenged before us by learned counsel for the appellant on the ground that the risk was not covered against the third party and that the deceased was a gratuitous passenger in the jeep. Learned counsel for the appellant has also submitted that in the written statement which was filed before the Tribunal, the Insurance Company had taken a specific plea that the Policy did not cover the risk of third party and that it did not cover the risk of gratuitous passenger.

4. We have heard learned counsel and have also gone through the impugned judgment as well as the available record.

The point that policy did not cover the risk of third party and gratuitous passenger has no substance because even if such a bald plea was taken, it was never contested that a proper issue be struck on this aspect

and the parties themselves decided to go ahead with the issues as had been framed by the Tribunal, and therefore, there was no question of going into this controversy at this stage. Once the risk of a third party is covered, it cannot be said that the Insurance Company could not be held jointly and severally liable to pay the compensation along with the owner and driver of the jeep when the passenger carried in the jeep on the front seat along with the driver and owner, has died in accident on account of the negligence of the owner and driver of the jeep itself which was insured with the Appellant Company.

The negligence in driving on the part of the owner-cum-driver of the jeep was not contested before us. We found from the issues as have been framed that the Insurance Company did not join issues with the claimants on the question that the deceased was a gratuitous passenger. The only relevant issue is Issue No.5 to the effect that who was liable to pay and to what extent. While discussing this issue, the Motor Accident Claims Tribunal had observed that the opponent No.1 was the driver-cum-owner of the vehicle and the said vehicle was insured with the opponent No.2 Insurance Company and, therefore, both the opponents are jointly and severally liable to pay the compensation. We therefore do not find any infirmity in the view taken by the Motor Accident Claims Tribunal and that the order as has been impugned before us does not suffer from any infirmity so as to warrant interference by us. This First Appeal has no merit and is hereby dismissed with no order as to costs.

5. The Record and Proceedings be returned forthwith. The amount of Rs. 25,000/- if it is deposited in this Court, be sent to the concerned Tribunal for investment and disbursement as ordered by the Tribunal itself.

(M.R. Calla,J.)

(J.R. Vora, J.)

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